

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Comprehensive Review of Licensing and)	IB Docket No. 12-267
Operating Rules for Satellite Services)	
)	

**COMMENTS OF THE
NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION**

The National Cable & Telecommunications Association (“NCTA”)^{1/} hereby submits these comments in response to the *Public Notice* issued in the above-referenced proceeding seeking comment on the appropriate timeframe for implementation of the Section 25.281(b) carrier identification requirement for digital video transmissions.^{2/} While NCTA appreciates the extension the International Bureau already granted for compliance with Section 25.281(b), based on circumstances the Commission could not have foreseen, it should further extend the deadline to September 3, 2019.

I. INTRODUCTION AND SUMMARY

As NCTA explained in its previous comments in this proceeding,^{3/} NCTA program network members distribute the vast majority of their programming to cable operators via satellite transmissions. They devote substantial resources to ensure the quality and integrity of

^{1/} NCTA is the principal trade association for the U.S. cable industry, representing cable operators serving more than 80 percent of the nation’s cable television households, more than 200 cable program networks, and others associated with the cable industry. The cable industry is the nation’s largest provider of broadband service after investing over \$245 billion since 1996 to build two-way interactive networks with fiber optic technology. Cable companies also provide state-of-the-art competitive voice service to approximately 30 million customers.

^{2/} See *International Bureau Seeks Comment on Implementation of Section 25.281(b) Transmitter Identification Requirements for Video Uplink Transmissions*, Public Notice, 31 FCC Rcd. 3417, 3418 (2016) (“*Public Notice*”).

^{3/} Comments of the National Cable & Telecommunications Association, IB Docket No. 12-267, at 2 (filed Jan. 14, 2013).

these satellite signals and to mitigate interference. When the Commission updated its Part 25 rules in 2013, it required digital satellite uplink transmissions from temporary-fixed earth stations to include a signal identifying the source of the transmission – directly affecting NCTA members who transmit program material from remote sites to production studios and other locations. Those rules were scheduled to go into effect on September 3, 2016. Recognizing that equipment necessary to upgrade existing earth stations was not as available as the Commission expected,^{4/} the International Bureau provided important, temporary relief from that requirement in March 2016.^{5/} However, the existing one-year extension of the deadline is not sufficient. Based on the state of the earth station modulator market and the life cycle of modulator equipment, the Commission should extend the deadline for compliance with the new Automatic Transmitter Identification System (“ATIS”) requirement for an additional two years, to September 3, 2019.

II. ADDITIONAL TIME IS NECESSARY TO TRANSITION TO EQUIPMENT THAT CAN COMPLY WITH THE NEW ATIS RULE

When the Commission decided on a two-year transition period for temporary earth stations using digital uplink technologies to transition to the new ATIS rule, it did not assume that licensees would necessarily replace their equipment within that period (using “embedded” technology). Instead, it contemplated that licensees would use supplemental, or *external*, modulators to conform to the new rules.^{6/} While the Commission was correct not to require

^{4/} *Temporary Waiver of Section 25.281(b) Transmitter Identification Requirements for Video Uplink Transmissions*, Order, 31 FCC Rcd. 1752, ¶ 5 (2016) (“Based on concerns raised by affected earth station operators and staff market surveillance, it appears that the external modulators necessary to upgrade equipment have not become available.”).

^{5/} *See generally id.*

^{6/} *See Comprehensive Review of Licensing Operating Rules for Satellite Services*, Report and Order, 28 FCC Rcd. 12403, ¶ 220 (2013) (“*Part 25 Order*”). Citing comments filed by the Satellite Industry Association, the Commission reasoned that permitting two years to comply with the requirement was

licensees to unnecessarily retire equipment to conform to the ATIS requirement, it is now apparent that requiring an equipment upgrade within that time frame was also unrealistic.

In particular, the *external* modulator market – that the Commission assumed would develop to meet the new obligations – has not evolved to support the necessary equipment upgrades. In the experience of NCTA members, equipment manufacturers have been reluctant to invest in research and development for a product that will be used for a limited period of time. The fact that a robust market for external modulators has not developed is unsurprising – any such products will be obsolete when programmers replace their current equipment in the next few years. While users with newer equipment may be able to comply with the rules using a software upgrade, those with older equipment simply cannot obtain the external hardware necessary to upgrade.

The fact that a significant market for external modulators has not developed should not cause the Commission to reverse its earlier decision and now mandate that users immediately buy new equipment. *First*, NCTA members have found that older equipment, which continues to meet users’ needs, would need to be completely replaced at a cost of around \$8,000 to \$13,000 per unit. *Second*, even if users were willing to spend the money to purchase new, compliant equipment, NCTA members have found that there is a supply shortage of *embedded* modulator equipment. Providing only a one-year extension of the transition period would therefore be unreasonable when it remains unclear when earth station operators may be able to acquire the equipment – whether with external or embedded modulators necessary to implement compliance with the Commission’s new mandate.

sufficient because it was “not adopting an embedding requirement.” *See id.* (citing Comments of the Satellite Industry Association, IB Docket No. 12-267, at 65 (filed Jan. 14, 2013)).

III. THE COMMISSION SHOULD FURTHER EXTEND THE TRANSITION DEADLINE TO SEPTEMBER 3, 2019

The better approach is for the Commission to extend the compliance deadline for an additional two years to September 3, 2019. This will: 1) permit licensees to replace existing equipment after its useful life, consistent with Commission precedent; 2) allow the equipment market for devices with embedded capabilities to more fully develop;^{7/} and 3) avoid reliance on an external modulator market that may never adequately support industry requirements.

This outcome would be consistent with Commission precedent. The FCC has often provided relief where equipment is not yet readily available. For example, the Commission decided in 2008 to grant Local Multipoint Distribution License (“LMDS”) licensees additional time to construct their licenses because “they faced factors beyond their control, including difficulties in obtaining viable, affordable equipment.”^{8/} There, the Commission explained that LMDS equipment was becoming available, but granting the licensees some additional time to meet performance requirements would allow the equipment market to develop further.^{9/} Likewise, in 2010 the Commission granted Multichannel Video and Data Distribution Service (“MVDDS”) licensees an additional five years to meet their buildout requirement, because the “record demonstrate[d] . . . a lack of viable, affordable equipment for MVDDS,” which was beyond the licensees’ control.^{10/} The Commission again decided that “the public interest would

^{7/} The requested two-year extension would also allow the more complete development of the associated market for receivers and decoders used in connection with the ATIS-compliant transmitters.

^{8/} *Applications Filed by Licensees in the Local Multipoint Distribution Service (LMDS) Seeking Waivers of Section 101.1011 of the Commission's Rules and Extensions of Time to Construct and Demonstrate Substantial Service, et al.*, Memorandum Opinion and Order, 23 FCC Rcd. 5894, ¶¶ 24-27 (2008).

^{9/} *Id.* ¶¶ 25-26.

^{10/} *See Requests of Ten Licensees of 191 Licenses in the Multichannel Video and Data Distribution Service for Waiver of the Five-Year Deadline for Providing Substantial Service*, Order, 25 FCC Rcd. 10097, ¶¶ 10-12 (2010).

be best served by granting the[] MVDDS licensees additional time in which to construct their licenses, to allow the equipment market to develop further,” and noted that the relief was “well within precedent.”^{11/} While those cases may have involved performance obligations, the rationale applies equally here – relief is appropriate where rule compliance rests on an equipment market that has not fully developed. The two-year timeline for licensee transition may have been reasonable at the time the Commission adopted the carrier identification rule,^{12/} but the market cannot yet support a transition to uplink equipment capable of complying with the new rule – a fact the Commission has already recognized.^{13/}

Similarly, the FCC has previously acted to prevent or mitigate stranded investment in legacy equipment. In the 700 MHz narrowbanding proceeding, for example, the Commission concluded that the narrowbanding deadline of December 2016 “would force many licensees to modify or replace existing systems well before the end of their useful life.”^{14/} Highlighting, among other things, the importance of avoiding stranded investment, the Commission ultimately eliminated the narrowbanding requirement altogether.^{15/}

While the Commission need not discard the new ATIS rule, the Commission should alleviate the burden of compliance by eliminating unnecessary expenses and stranded investment. The average lifespan of uplink equipment is approximately five years, with an original investment cost of \$8,000 to \$15,000. Programmers are now in the process of evaluating the next-generation transmission platform for satellite trucks. Artificially forcing the

^{11/} *Id.* ¶¶ 10, 12.

^{12/} *See Part 25 Order* ¶ 220.

^{13/} *See Public Notice* at 2.

^{14/} *Proposed Amendments to the Service Rules Governing Public Safety Narrowband Operations in the 769-775/799-805 MHz Bands, et al.*, Report and Order, 29 FCC Rcd. 13283, ¶¶ 4-12 (2014).

^{15/} *Id.* ¶¶ 9-10.

retirement of functional equipment would result in waste and stranded investment, when programmers will likely purchase new equipment that will support the new carrier identification requirement in just a few years. It would therefore be reasonable for the Commission to extend the transition period for a total of three years beyond the initial two-year grace period, to September 3, 2019.

An additional extension of two years would not materially affect other spectrum users. The Commission initially proposed updating the rule not out of any specific interference concerns, but as part of a much larger effort to comprehensively modernize the Part 25 rules.^{16/} The Commission waited for years after these earth stations had already begun using digitally modulated uplink transmissions to update a rule more than 20 years old.^{17/} If temporary-fixed satellite uplinks cause any problematic interference, the Commission can continue to identify the sources of the interference and resolve conflicts on an *ad hoc* basis using existing resources.

IV. CONCLUSION

As the Commission itself acknowledges, external modulators suitable for complying with the new carrier identification rule have not become widely available, so many earth station operators must entirely replace their existing uplink equipment to comply with the new carrier identification rule – entailing “considerably greater expense than anticipated when the rule was adopted.”^{18/} Compliant embedded modulator equipment, for replacing existing equipment, is also in short supply. The Commission should provide relief where necessary equipment remains

^{16/} See *Comprehensive Review of Licensing Operating Rules for Satellite Services*, Notice of Proposed Rulemaking, 27 FCC Rcd. 11619, ¶ 1 (2012) (“As part of our ongoing efforts to update and streamline regulatory requirements, the Commission today initiates a comprehensive review of Part 25 of our rules, which governs the licensing and operation of space stations and earth stations. . . this Notice is our first wholesale examination of the rules governing satellite services in over a decade.”).

^{17/} See *Part 25 Order* ¶ 208.

^{18/} *Public Notice* at 2.

unavailable, as it has in the past, and extend the deadline for complying with the new ATIS rule.

In doing so, the Commission should take into account the life cycle of earth station uplink equipment to avoid stranding investment, and therefore extend the transition period by an amount unlikely to negatively impact other spectrum users, for two additional years, to September 3, 2019.

Respectfully submitted,

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